

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

STATE FARM FIRE AND CASUALTY
COMPANY,

Plaintiff,

v.

SEAN H. DOUCETTE, et al.,

Defendants.

CASE NO. C16-5169BHS

ORDER DENYING MOTIONS
FOR SUMMARY JUDGMENT

This matter comes before the Court on Plaintiff State Farm Fire & Casualty Company's ("State Farm") motion for summary judgment (Dkt. 16), Defendants Rachel and Sean Doucette's ("Doucettes") motion for summary judgment (Dkt. 18), and Defendant Ilya Dumitrash's, as personal representative of the estate of Iosif Dumitrash ("Estate"), motion for summary judgment (Dkt. 19). The Court has considered the pleadings filed in support of and in opposition to the motions and the remainder of the file and hereby rules as follows:

I. PROCEDURAL AND FACTUAL BACKGROUND

In an underlying state court action, the Estate sued Mr. Doucette for the wrongful death of Iosif Dumitrash. Dkt. 1, Exh. A ("State Comp."). The Doucettes filed a claim under their insurance policy with State Farm seeking defense and indemnity. State Farm

1 filed this action seeking a declaration that it has no duty to defend and no duty to
2 indemnify.

3 **A. The Policy**

4 On May 1, 2012, the Doucettes renewed their homeowners' insurance policy with
5 State Farm covering the period from June 17, 2012 to June 17, 2013. Dkt. 17,
6 Declaration of Mary R. DeYoung, Exh. F ("Policy"). In relevant part, the Policy
7 provides as follows:

8 **SECTION II – LIABILITY COVERAGE**

9 **COVERAGE L – PERSONAL LIABILITY**

10 If a claim is made or a suit is brought against an insured for damages
11 because of bodily injury or property damage to which this coverage applies,
caused by an occurrence, we will:

- 12 1. pay up to our limit of liability for the damages for which the
insured is legally liable; and
- 13 2. provide a defense at our expense by counsel of our choice. We
14 may make any investigation and settle any claim or suit that we decide is
appropriate. Our obligation to defend any claim or suit ends when the
15 amount we pay for damages, to effect settlement or satisfy a judgment
resulting from the occurrence, equals our limit of liability.

16 The coverage is subject to the following exclusion:

17 **SECTION II – EXCLUSIONS**

- 18 1. Coverage L and Coverage M do not apply to
a. bodily injury or property damage:
19 (1) which is either expected or intended by the insured

20 The policy contains the following definitions:
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1 **DEFINITIONS**

2 “You” and “your” mean the “named insured” shown in the
 3 Declarations. Your spouse is included if a resident of your household.
 4 “We”, “us” and “our” mean the Company shown in the Declarations.

* * *

5 7. “occurrence,” when used in Section II of this policy, means an
 6 accident, including exposure to conditions, which results in:

- 7 a. bodily injury; or
- 8 b. property damage;

9 during the policy period. Repeated or continuous exposure to the same
 10 general conditions is considered to be one occurrence.

11 **B. The Underlying Action**

12 On July 13, 2015, the Estate filed a lawsuit against Mr. Doucette in Clark County
 13 Superior Court for the State of Washington. In relevant part, the complaint alleges as
 14 follows:

15 [Mr. Dumitrash] spent the evening with his friends drinking
 16 alcoholic beverages at his cousin’s house. Late in the evening, [Mr.
 17 Dumitrash] called a family member because he had become inebriated and
 18 could not drive home. When the family member was unable to pick him up,
 19 [Mr. Dumitrash] left his cousin’s house for a brief walk outside.

20 [Mr. Dumitrash] wandered around the neighborhood and onto NE
 21 33rd Street in Vancouver, Clark County, Washington, eventually walking
 22 toward [Mr. Doucette]’s residence.

 At approximately 4:00 a.m. on January 29, 2013, [Mr. Doucette]
 arrived home from his late night shift working as a private security guard.
 [Mr. Doucette] resides at 14802 NE 33rd Street in Vancouver, Clark
 County, Washington. [Mr. Doucette] was armed with a loaded Glock
 Model 17 Gen4 9mm Lugar caliber semi-automatic weapon. Upon arriving
 to his residence, [Mr. Doucette] walked part way into his front door
 threshold, whereupon he noticed [Mr. Dumitrash] across the street. [Mr.
 Doucette] believed [Mr. Dumitrash] was attempting to break into his
 neighbor’s vehicle. [Mr. Doucette] instructed his wife to call law
 enforcement. Rather than remain inside his home, [Mr. Doucette]
 proceeded to his front yard in order to confront [Mr. Dumitrash].

 [Mr. Doucette] instructed [Mr. Dumitrash] to remain where he was
 until law enforcement arrived. [Mr. Dumitrash] walked up to [Mr.
 Doucette] and the two began a verbal altercation. [Mr. Dumitrash] was

1 exhibiting objective signs of intoxication, such as slurred speech and
 2 difficulty walking. On information and belief, [Mr. Doucette] not only
 3 observed [Mr. Dumitrash]' s intoxication, but also quickly observed [Mr.
 4 Dumitrash] was unarmed and did not pose a danger. After a brief verbal
 altercation, [Mr. Dumitrash] attempted to walk away from the vicinity. [Mr.
 Doucette]—a former Marine—grabbed [Mr. Dumitrash], subdued him, and
 further placed him in his custody.

After detaining [Mr. Dumitrash] and placing him on the ground,
 [Mr. Doucette] drew his firearm. On information and belief, [Mr. Doucette]
 allowed [Mr. Dumitrash] to stand up from his seated position, but failed to
 holster his weapon. [Mr. Dumitrash] again sought to leave the vicinity and
 [Mr. Doucette] grabbed [Mr. Dumitrash], which resulted in a physical
 altercation. During this altercation, [Mr. Dumitrash's] firearm discharged
 multiple times, striking [Mr. Dumitrash] at least once in the chest

8 State Comp. at ¶¶ 2.3–2.7. Mr. Dumitrash died as a result of the gunshots. Based on
 9 these allegations, the Estate brought a wrongful death claim and a survival claim. *Id.*, ¶¶
 10 3.1–4.7. It is uncontested that “[b]oth causes of action assert duties [Mr.] Doucette
 11 breached, which brought about injury and/or unreasonable risk of harm to Mr.
 12 Dumitrash.” Dkt. 19 at 6. State Farm, however, does contend that artful drafting clothes
 13 intentional tort claims in negligence language. Dkt. 16.

14 **C. Reservation of Rights**

15 After receiving the underlying lawsuit, Mr. Doucette tendered it to State Farm for
 16 defense under the Policy. On July 30, 2015, State Farm agreed to provide a defense
 17 under a reservation of rights.

18 **II. DISCUSSION**

19 **A. Summary Judgment Standard**

20 Summary judgment is proper only if the pleadings, the discovery and disclosure
 21 materials on file, and any affidavits show that there is no genuine issue as to any material
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1 fact and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c).
2 The moving party is entitled to judgment as a matter of law when the nonmoving party
3 fails to make a sufficient showing on an essential element of a claim in the case on which
4 the nonmoving party has the burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317,
5 323 (1986). There is no genuine issue of fact for trial where the record, taken as a whole,
6 could not lead a rational trier of fact to find for the nonmoving party. *Matsushita Elec.*
7 *Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986) (nonmoving party must
8 present specific, significant probative evidence, not simply “some metaphysical doubt”).
9 *See also* Fed. R. Civ. P. 56(e). Conversely, a genuine dispute over a material fact exists
10 if there is sufficient evidence supporting the claimed factual dispute, requiring a judge or
11 jury to resolve the differing versions of the truth. *Anderson v. Liberty Lobby, Inc.*, 477
12 U.S. 242, 253 (1986); *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d
13 626, 630 (9th Cir. 1987).

14 The determination of the existence of a material fact is often a close question. The
15 Court must consider the substantive evidentiary burden that the nonmoving party must
16 meet at trial – e.g., a preponderance of the evidence in most civil cases. *Anderson*, 477
17 U.S. at 254; *T.W. Elec. Serv., Inc.*, 809 F.2d at 630. The Court must resolve any factual
18 issues of controversy in favor of the nonmoving party only when the facts specifically
19 attested by that party contradict facts specifically attested by the moving party. The
20 nonmoving party may not merely state that it will discredit the moving party’s evidence
21 at trial, in the hopes that evidence can be developed at trial to support the claim. *T.W.*
22 *Elec. Serv., Inc.*, 809 F.2d at 630 (relying on *Anderson*, 477 U.S. at 255). Conclusory,

1 nonspecific statements in affidavits are not sufficient, and missing facts will not be
2 presumed. *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 888-89 (1990).

3 **B. Duty to Defend**

4 “It is well established in this and other jurisdictions that the insurer’s duty to
5 defend, unlike its duty to pay, arises when the complaint is filed and is to be determined
6 from the allegations of the complaint.” *Holland Am. Ins. Co. v. Nat'l Indem. Co.*, 75
7 Wn.2d 909, 911 (1969). This duty “is based on the potential for liability.” *Truck Ins.*
8 *Exch. v. Vanport Homes, Inc.*, 147 Wn.2d 751, 760 (2002). Thus, “[i]f the complaint is
9 ambiguous, it will be liberally construed in favor of triggering the insurer’s duty to
10 defend.” *Id.* (citing *R.A. Hanson Co. v. Aetna Ins. Co.*, 26 Wn. App. 290, 295 (1980)).
11 “Only if the alleged claim is clearly not covered by the policy is the insurer relieved of its
12 duty to defend.” *Id.* (citing *Kirk v. Mt. Airy Ins. Co.*, 134 Wn.2d 558, 561 (1998)).

13 In this case, State Farm does not solely rely on the allegations within the four
14 corners of the complaint in making its motion. As both the Doucettes and the Estate
15 contend, the claims in the underlying complaint sound in negligence. Dkt. 22 at 4; Dkt.
16 21 at 9. For example, the Estate alleges that Mr. Doucette owed numerous duties to the
17 deceased. State Comp. at ¶¶ 3.4, 4.4. Construing the complaint liberally, the Court
18 concludes that the complaint includes negligence claims, which are covered by the
19 policy. State Farm, however, requests the Court to look outside the complaint at
20 evidence that establishes Mr. Doucette’s intentional acts. Dkt. 16 at 13 (“The undisputed
21 evidence presented in the criminal action confirmed that Mr. Dumitrash was struck in the
22 chest by four bullets while he was advancing toward Mr. Doucette.”).

1 “There are two exceptions to the rule that the duty to defend must be determined
2 only from the complaint, and both the exceptions favor the insured.” *Truck Ins.*, 147
3 Wn.2d at 761. Relevant to this case, “facts outside the complaint may be considered if
4 (a) the allegations are in conflict with facts known to or readily ascertainable by the
5 insurer or (b) the allegations of the complaint are ambiguous or inadequate.” *Id.* (internal
6 quotations omitted). However, “an insurer may not rely on facts extrinsic to the
7 complaint in order to deny its duty to defend where, as here, the complaint can be
8 interpreted as triggering the duty to defend. If in doubt, it may file a declaratory action.”
9 *Id.*

10 In this case, the parties dispute the use of facts outside the complaint as well as the
11 consequences of those facts. First, the Estate argues that, as a matter of law, State Farm
12 may not look outside the four corners of the complaint in challenging its duty to defend.
13 Dkt. 22 at 2. While State Farm may not rely on facts outside the complaint in order to
14 deny its duty to defend, neither the Estate nor the Doucette have submitted any authority
15 for the proposition that the Court is precluded from relying on facts outside the complaint
16 in declaring that State Farm owes no duty to defend. If the declaratory judgment court
17 was precluded from considering facts outside the complaint, then these actions would be
18 reduced to the simple task of construing the underlying complaint. For example, assume
19 that an underlying complaint alleges that a particular person committed some negligent
20 act triggering coverage. Also assume that, after the complaint was filed, the insurer
21 discovers evidence that conclusively proves that the person was jailed in a foreign
22 country at the time of the alleged incident and directly contradict a necessary allegation in

1 the complaint. Under the Estate's rationale, the Court would be precluded from using
2 that evidence to enter a declaration that the underlying claim is clearly not covered by the
3 policy. Although Washington law prevents State Farm from using that extrinsic evidence
4 to initially deny the duty to defend, it is preposterous to argue that the Court is precluded
5 from relying on additional evidence to support a declaration of no duty to defend.
6 Therefore, the Court will look to the documents from Mr. Doucette's criminal
7 proceeding.

8 Second, State Farm argues that Mr. Doucette is judicially estopped from asserting
9 any factual rendition other than Mr. Doucette deliberately shot Mr. Dumitrash in self-
10 defense. The problem with State Farm's argument is that, even if Mr. Doucette is
11 steadfast in his story of intentional self-defense, the complaint alleges a "physical
12 altercation" and that shots were fired striking Mr. Dumitrash in the chest. State Comp. at
13 ¶ 2.7. Thus, liberally construed, there exists a potential for liability under a theory of
14 negligence because State Farm has failed to submit undisputed facts establishing the
15 circumstances surrounding the shooting. This is not "inconsistent" with Doucette's
16 assertion of self-defense because his current position is that the Estate is suing him for
17 negligence. It is no secret that juries are unpredictable, and the potential exists for a jury
18 to conclude that the Doucettes are liable for the claims in the complaint. Until that
19 potential liability is decided in the Doucettes' favor, what Doucette may or may not
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1 testify to is irrelevant.¹ Accordingly, the Court concludes that facts outside the complaint
2 are not in “conflict” with allegations in the complaint because two versions of the same
3 story may coexist and must be resolved by a jury.

4 Third, the cases State Farm cites do not undermine the Court’s conclusion because
5 none of them involve a physical altercation when the shooting occurred. Instead, the
6 cases involve clear and undisputed intentional shootings. *See Grange Ins. Co. v.*
7 *Brosseau*, 113 Wn.2d 91, 96 (1989) (“Brosseau’s statement establishes that he pumped
8 the shotgun, aimed it at Anderson, and pulled the trigger.”); *Safeco Inc. Co. v. Butler*, 118
9 Wn.2d 383, 400 (1992) (“It is undisputed that Butler intentionally fired his gun at
10 Zenker’s truck”); *Allstate v. Raynor*, 93 Wn. App. 484, 492 (“Milton had entered the
11 Johnson property and started shooting.”); *Allstate Ins. Co. v. Bauer*, 96 Wn. App. 11, 12
12 (1999) (“Bauer claims that the shooting was an accident because he mistakenly believed
13 that the deceased was armed”); *State Farm Fire and Cas. Co. v. Parrella*, 134 Wn. App.
14 536, 541 (2006) (“Carolanne Potts argues the incident was an accident because Anthony
15 did not intend to hurt her son. But his subjective intent is not relevant.”). Therefore, the
16 Court denies State Farm’s motion without prejudice on the issue of a duty to defend
17 because it is possible that the facts alleged in the complaint trigger the potential for
18 liability.

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¹ Although no party has identified this issue, it seems that Doucette will never change his
story that the shooting was intentional. In Washington, a defendant is not entitled to the defense
of self-defense if the force used was accidental, *State v. Gogolin*, 45 Wn. App. 640, 643 (1986),
the government dismissed the charges against Doucette without prejudice, Dkt. 17 at 39, and
there is no statute of limitations for murder or manslaughter.

1 With regard to the Estate's and the Doucettes' motions, the Court denies these
2 motions because disputed issues of material fact exist. If State Farm discovers facts to
3 conclusively show that no "altercation" occurred and Doucette fired the fatal shots from
4 some distance, then it appears that Washington law precludes coverage because the
5 shooting would not be an occurrence under the policy. In the absence of that factual
6 issue being resolved, State Farm is entitled to defending under a reservation of rights.
7 Accordingly, the Court denies the Estate's and the Doucette's motions without prejudice
8 on this issue.

9 **C. Duty to Indemnify**

10 The duty to indemnify "hinges on the insured's actual liability to the claimant and
11 actual coverage under the policy." *Woo v. Fireman's Fund Ins. Co.*, 161 Wn.2d 43, 53
12 (2007) (citing *Hayden v. Mut. of Enumclaw Ins. Co.*, 141 Wn.2d 55, 64 (2000)).

13 In this case, all parties seek a ruling on State Farm's duty to indemnify. The
14 parties' motions, however, are premature. When actual liability is determined, the Court
15 will address this issue. Liability may be determined in a number of ways, including jury
16 verdict or a dispositive ruling on the issue of whether Mr. Doucette's actions were
17 intentional. Until such time, the Court declines to issue advisory opinions on the duty to
18 indemnify. Therefore, the parties' motions are denied as moot.

19 **III. ORDER**

20 Therefore, it is hereby **ORDERED** that (1) on the issue of the duty to defend,
21 State Farm's motion, the Estate's and the Doucette's motions (Dkts. 16, 18, 19) are
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1 **DENIED without prejudice** and (2) on the issue of the duty to indemnify, all the
2 motions are **DENIED** as premature.

3 Dated this 14th day of September, 2016.

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6 BENJAMIN H. SETTLE
7 United States District Judge
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